

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN ASSEMBLY MAY 11, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 684**

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**Introduced by Assembly Members Alejo and Bonilla**

February 25, 2015

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An act to amend ~~Section 3137 of, and to add and repeal Sections 655.1 and 2556.1 of, Sections 2546.2, 2546.9, 2550.1, 2556, 2567, 3010.5, 3011, and 3013 of, to add Sections 2556.1 and 3020 to, to add and repeal Section 2556.2 of, and to repeal and add Section 655 of, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 684, as amended, Alejo. ~~Healing arts: licensees: disciplinary actions. State Board of Optometry: optometrists: nonresident contact lens sellers: registered dispensing opticians.~~

Existing law prohibits a licensed optometrist and a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with each other. Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any

profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Existing law makes a violation of these provisions by a licensed optometrist and any other persons, whether or not a healing arts licensee, who participates with a licensed ~~optometrist~~ optometrist, subject to a crime.

Under existing law, the Medical Board of California is responsible for the registration and regulation of *nonresident contact lens sellers and dispensing opticians*. *Existing law requires fees collected from nonresident contact lens sellers to be deposited in the Dispensing Opticians Fund, and to be available, upon appropriation, to the Medical Board of California. Existing law requires fees collected from registered dispensing optician to be paid into the Contingent Fund of the Medical Board of California. Existing law makes a violation of the registered dispensing optician provisions a crime.* Existing law, the Optometry Practice Act, makes the State Board of Optometry responsible for the licensure and regulation of optometrists. A violation of the Optometry Practice Act is a crime. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime.

*This bill would repeal those prohibitions. The bill would prohibit a licensed optometrist from having any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or registered dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products, except as otherwise authorized. The bill would authorize a registered dispensing optician to operate, own, or have an ownership interest in a licensed health care service plan and to directly or indirectly provide products and services to the health care service plan or its contracted providers and enrollees, if the health care service plan meets certain requirements. The bill would authorize an optometrist, a registered dispensing optician, and a health care service plan to execute a lease or other written agreement giving rise to a direct or indirect*

*landlord-tenant relationship if specified conditions are contained in a written agreement, as provided. The bill would require a landlord or tenant to comply with an enforcement entity's request to inspect a lease agreement. Because the failure to comply with that request would be a crime under specified acts, the bill would impose a state-mandated local program. The bill would prohibit a registered dispensing optician from having any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as authorized. The bill would make a violation of these provisions a crime. By creating a new crime, the bill would impose a state-mandated local program.*

*This bill would instead make the State Board of Optometry responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. The bill would direct fees collected from registered dispensing opticians and persons seeking registration as a dispensing optician to be paid into the Dispensing Opticians Fund, and to be available, upon appropriation, to the State Board of Optometry.*

*Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, or to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes.*

*This bill, except as specified, would make it unlawful for a registered dispensing optician to, among other things, advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon or to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes. The bill would authorize the State Board of Optometry, by regulation, to impose and issue administrative fines and citations for a violation of these provisions, as specified. The bill would authorize the State Board of Optometry to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist for the purposes of determining compliance with the aforementioned written lease agreement provisions. The bill would also authorize the State Board of Optometry to take disciplinary action against a party who fails to comply with the inspection and would require the State Board of Optometry to provide specified copies of the inspection results.*

*Because the failure to comply with the inspection would be a crime under the registered dispensing provisions, the bill would impose a state-mandated local program*

~~This bill, until January 1, 2017, would exempt a licensed optometrist or an individual, corporation, or firm operating as a registered dispensing optician licensed or registered before the effective date of the bill, or an employee of such an entity, from being subject to any action by the Medical Board of California, the State Board of Optometry, another state agency, or a district attorney with enforcement authority for engaging in any of the aforementioned business relationships. The bill, with respect to an action subject to the exemption, would toll, for the effective period of the exemption, specific limitation periods imposed on the filing of accusations.~~

~~Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, or to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes.~~

~~This bill, until January 1, 2017, 2019, would prohibit an individual, corporation, or firm operating as a registered dispensing optician before the effective date of the bill, or an employee of such an entity, from being subject to any action for engaging in that aforementioned *unlawful* conduct.~~

~~*Under existing law, the State Board of Optometry consists of 11 members, 6 licensee members and 5 public members.*~~

~~*This bill would require one of the nonpublic members to be a registered dispensing optician and would require the Governor to make that appointment. The bill would establish within the State Board of Optometry a Registered Dispensing Optician Committee to oversee the registration and enforcement of registered dispensing opticians, as provided.*~~

~~*This bill would make various conforming changes.*~~

~~*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*~~

~~*This bill would provide that no reimbursement is required by this act for a specified reason.*~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 655 of the Business and Professions Code*  
2     *is repealed.*

3     ~~655. (a) No person licensed under Chapter 7 (commencing~~  
4     ~~with Section 3000) of this division may have any membership,~~  
5     ~~proprietary interest, coownership, landlord-tenant relationship, or~~  
6     ~~any profit-sharing arrangement in any form, directly or indirectly,~~  
7     ~~with any person licensed under Chapter 5.5 (commencing with~~  
8     ~~Section 2550) of this division.~~

9     ~~(b) No person licensed under Chapter 5.5 (commencing with~~  
10    ~~Section 2550) of this division may have any membership,~~  
11    ~~proprietary interest, coownership, landlord-tenant relationship, or~~  
12    ~~any profit-sharing arrangement in any form directly or indirectly~~  
13    ~~with any person licensed under Chapter 7 (commencing with~~  
14    ~~Section 3000) of this division.~~

15    ~~(c) No person licensed under Chapter 7 (commencing with~~  
16    ~~Section 3000) of this division may have any membership,~~  
17    ~~proprietary interest, coownership, landlord-tenant relationship, or~~  
18    ~~any profit-sharing arrangement in any form, directly or indirectly,~~  
19    ~~either by stock ownership, interlocking directors, trusteeship,~~  
20    ~~mortgage, trust deed, or otherwise with any person who is engaged~~  
21    ~~in the manufacture, sale, or distribution to physicians and surgeons,~~  
22    ~~optometrists, or dispensing opticians of lenses, frames, optical~~  
23    ~~supplies, optometric appliances or devices or kindred products.~~

24    ~~Any violation of this section constitutes a misdemeanor as to~~  
25    ~~such person licensed under Chapter 7 (commencing with Section~~  
26    ~~3000) of this division and as to any and all persons, whether or~~  
27    ~~not so licensed under this division, who participate with such~~  
28    ~~licensed person in a violation of any provision of this section.~~

29    ~~SEC. 2. Section 655 is added to the Business and Professions~~  
30    ~~Code, to read:~~

31    ~~655. Notwithstanding any other law:~~

32    ~~(a) No optometrist licensed under Chapter 7 (commencing with~~  
33    ~~Section 3000) may have any membership, proprietary interest,~~

1 *coownership, or any profit-sharing arrangement, either by stock*  
2 *ownership, interlocking directors, trusteeship, mortgage, or trust*  
3 *deed, with any registered dispensing optician, as described in*  
4 *Chapter 5.5 (commencing with Section 2550), or any person who*  
5 *is engaged in the manufacture, sale, or distribution to physicians*  
6 *and surgeons, optometrists, or registered dispensing opticians of*  
7 *lenses, frames, optical supplies, optometric appliances or devices*  
8 *or kindred products, except as otherwise permitted under this*  
9 *section.*

10 *(b) A registered dispensing optician may operate, own, or have*  
11 *an ownership interest in a health care service plan licensed*  
12 *pursuant to Chapter 2.2 (commencing with Section 1340) of*  
13 *Division 2 of the Health and Safety Code and may directly or*  
14 *indirectly provide products and services to the health care service*  
15 *plan or its contracted providers and enrollees if the health care*  
16 *service plan has a current and active license with the Department*  
17 *of Managed Health Care and is in compliance with all laws and*  
18 *regulations applicable to the health care service plan. Any*  
19 *complaints received by the Department of Managed Health Care*  
20 *related to the services provided by an optometrist or any findings*  
21 *by the Department of Managed Health Care that reflect*  
22 *substandard care or a potential violation of the Optometry Practice*  
23 *Act (Chapter 7 (commencing with Section 3000)) by an optometrist*  
24 *shall be forwarded to the State Board of Optometry.*

25 *(c) An optometrist, a registered dispensing optician, and a health*  
26 *care service plan may execute a lease or other written agreement*  
27 *giving rise to a direct or indirect landlord-tenant relationship if*  
28 *all of the following conditions are contained in a written agreement*  
29 *establishing the landlord-tenant relationship:*

30 *(1) The optometry practice shall be owned by the optometrist*  
31 *and in every aspect be under the optometrist's exclusive control,*  
32 *including, but not limited to, the selection and supervision of*  
33 *optometric staff, the scheduling of patients, the amount of time the*  
34 *optometrist spends with patients, fees charged for optometric*  
35 *products and services, the examination procedures and treatment*  
36 *provided to patients, and the optometrist's contracting with health*  
37 *care service plans. This paragraph shall not preclude a lease from*  
38 *including commercially reasonable terms that do any of the*  
39 *following:*

1     (A) *Require the provision of optometric services at the premises*  
2 *during certain days and hours.*

3     (B) *Restrict the use of the premises for the sale or offer for sale*  
4 *of spectacles, frames, lenses, contact lenses, or other ophthalmic*  
5 *products, except that the optometrist shall be permitted to sell*  
6 *therapeutic ophthalmic products if the landlord does not offer any*  
7 *substantially similar therapeutic ophthalmic products for sale.*

8     (C) *Enter the optometrist into an agreement with a health care*  
9 *service plan or health insurer.*

10    (D) *Permit the landlord to directly or indirectly provide*  
11 *furnishings and equipment in the leased space.*

12    (2) *The patient records shall be the sole property of the*  
13 *optometrist. Only the optometrist and those persons who have been*  
14 *authorized, in writing, by the optometrist shall have access to the*  
15 *patient records and the examination room, except as otherwise*  
16 *provided by law.*

17    (3) *The optometrist's leased space shall be definite and distinct*  
18 *from the space occupied by the other occupants of the premises,*  
19 *have a sign designating that the leased space is occupied by an*  
20 *independent optometrist or optometrists, and be accessible to the*  
21 *optometrist after hours or in the case of an emergency, subject to*  
22 *the facility's general accessibility. This paragraph shall not require*  
23 *a separate entrance to the optometrist's leased space.*

24    (4) *All signs, advertising, and displays shall be separate and*  
25 *distinct from that of the other occupants and shall have the*  
26 *optometrist's name and the word "optometrist" prominently*  
27 *displayed in connection therewith. This paragraph shall not*  
28 *prohibit optometrists or registered dispensing opticians,*  
29 *individually or jointly, from advertising their practice locations*  
30 *in the leased premises, their participation in any health care*  
31 *service plan's network, or the health care service plan's products*  
32 *in which they participate.*

33    (5) *There shall be no signs displayed on any part of the premises*  
34 *or in any advertising indicating that the optometrist is employed*  
35 *or controlled by the landlord.*

36    (6) *Except for a statement that an independent Doctor of*  
37 *Optometry is located on the premises and in-store pricing signs,*  
38 *as permitted by this subdivision, the landlord shall not link its*  
39 *advertising with the optometrist's name, practice, or fees.*

1     (7) *The optometrist shall not be precluded from collecting fees*  
2 *for services that are not included in a health care service plan's*  
3 *products and services contained in the health care service plan's*  
4 *provider agreement with the optometrist, subject to any disclosure*  
5 *requirements to the patients and enrollees.*

6     (8) *The term of the lease shall be no less than one year and shall*  
7 *not require the optometrist to contract exclusively with a health*  
8 *care service plan. The optometrist may terminate the lease*  
9 *according to the terms of the lease. The landlord may terminate*  
10 *the lease for any of the following reasons:*

11     (A) *The imposition of restrictions, suspension, or revocation of*  
12 *the optometrist's license or if the optometrist is or becomes*  
13 *ineligible to participate in state or federal government-funded*  
14 *programs.*

15     (B) *The termination of any underlying lease where the*  
16 *optometrist has subleased space, or the optometrist's failure to*  
17 *comply with the underlying lease provisions that are made*  
18 *applicable to the optometrist.*

19     (C) *Other reasons pursuant to the terms of the lease or permitted*  
20 *under the Civil Code, unrelated to the practice of optometry or*  
21 *the sale of optical goods, except as otherwise provide by this*  
22 *section.*

23     (9) *The landlord shall act in good faith in terminating the lease,*  
24 *and in no case shall the landlord terminate the lease for reasons*  
25 *that constitute interference with the practice of optometry.*

26     (10) *The lease or lease terms and payments shall not be based*  
27 *on the number of eye exams performed, prescriptions written,*  
28 *patient referrals, or the sale or promotion of the products of a*  
29 *registered dispensing optician or an optical company.*

30     (11) *The landlord shall not terminate the lease solely because*  
31 *of a report, complaint, or allegation filed by the optometrist against*  
32 *the landlord, a registered dispensing optician, or a health care*  
33 *service plan to the State Board of Optometry, the Medical Board*  
34 *of California, the Department of Managed Health Care, or any*  
35 *law enforcement or regulatory agency.*

36     (12) *The landlord shall not interfere with an outgoing*  
37 *optometrist's efforts to inform the optometrist's patients, in*  
38 *accordance with customary practice and professional obligations,*  
39 *of the relocation of the optometrist's practice.*



1     (13) *The State Board of Optometry, the Medical Board of*  
2 *California, or the Department of Managed Health Care may*  
3 *inspect, upon request, an individual lease agreement pursuant to*  
4 *its investigation authority, and if such a request is made, the*  
5 *landlord or tenant, as applicable, shall promptly comply with the*  
6 *request. Failure or refusal to comply with the request for a lease*  
7 *agreement within 30 days of receiving the request shall constitute*  
8 *unprofessional conduct, grounds for disciplinary action by the*  
9 *appropriate regulatory agency and a violation of the Optometry*  
10 *Practice Act and the Knox-Keene Health Care Service Plan Act*  
11 *of 1975, as applicable. Only personal information as defined in*  
12 *Section 1798.3 of the Civil Code may be redacted prior to dispatch*  
13 *of the lease or agreement.*

14     (d) *No registered dispensing optician may have any membership,*  
15 *proprietary interest, coownership, or profit-sharing arrangement*  
16 *either by stock ownership, interlocking directors, trusteeship,*  
17 *mortgage, or trust deed, with an optometrist, except as permitted*  
18 *under this section.*

19     (e) *Any violation of this section constitutes a misdemeanor as*  
20 *to such person licensed as an optometrist under Chapter 7*  
21 *(commencing with Section 3000) and as to any and all persons,*  
22 *whether or not so licensed under this division, who participate*  
23 *with an optometrist in a violation of any provision of this section.*

24     SEC. 3. *Section 2546.2 of the Business and Professions Code*  
25 *is amended to read:*

26     2546.2. (a) *All references in this chapter to the division shall*  
27 *mean the ~~Medical Board of California~~. State Board of Optometry.*

28     (b) *Unless contrary to the provisions of this chapter, regulations*  
29 *adopted by the Medical Board of California shall continue to apply*  
30 *to nonresident contact lens sellers until other regulations are*  
31 *adopted by the State Board of Optometry. All references in those*  
32 *regulations to “board” shall mean the State Board of Optometry,*  
33 *which shall solely enforce the regulations with respect to*  
34 *nonresident contact lens sellers.*

35     SEC. 4. *Section 2546.9 of the Business and Professions Code*  
36 *is amended to read:*

37     2546.9. *The amount of fees prescribed in connection with the*  
38 *registration of nonresident contact lens sellers is that established*  
39 *by the following schedule:*

1 (a) The initial registration fee shall be one hundred dollars  
2 (\$100).

3 (b) The renewal fee shall be one hundred dollars (\$100).

4 (c) The delinquency fee shall be twenty-five dollars (\$25).

5 (d) The fee for replacement of a lost, stolen, or destroyed  
6 registration shall be twenty-five dollars (\$25).

7 (e) The fees collected pursuant to this chapter shall be deposited  
8 in the Dispensing Opticians Fund, and shall be available, upon  
9 appropriation, to the ~~Medical Board of California~~ *State Board of*  
10 *Optometry* for the purposes of this chapter.

11 *SEC. 5. Section 2550.1 of the Business and Professions Code*  
12 *is amended to read:*

13 2550.1. (a) All references in this chapter to the board or the  
14 Board of Medical Examiners or division shall mean the ~~Medical~~  
15 ~~Board of California~~ *State Board of Optometry*.

16 (b) *Unless contrary to the provisions of this chapter, regulations*  
17 *adopted by the Medical Board of California shall continue to apply*  
18 *to registered dispensing opticians until other regulations are*  
19 *adopted by the State Board of Optometry. All references in those*  
20 *regulations to “board” shall mean the State Board of Optometry,*  
21 *which shall solely enforce the regulations with respect to registered*  
22 *dispensing opticians.*

23 *SEC. 6. Section 2556 of the Business and Professions Code is*  
24 *amended to read:*

25 2556. ~~It~~(a) *Except as authorized by Section 655, it is unlawful*  
26 *for a registered dispensing optician to do any of the following: to*  
27 *advertise the furnishing of, or to furnish, the services of—a*  
28 ~~refractionist, an optometrist, optometrist or a physician and~~  
29 ~~surgeon; surgeon, to directly or indirectly employ or maintain on~~  
30 ~~or near the premises used for optical dispensing, a refractionist,~~  
31 ~~an optometrist, a physician and surgeon, or a practitioner of any~~  
32 ~~other profession an optometrist or physician and surgeon for the~~  
33 *purpose of any examination or treatment of the eyes; eyes, or to*  
34 *duplicate or change lenses without a prescription or order from a*  
35 *person duly licensed to issue the same. For the purposes of this*  
36 *section, “furnish” does not mean to enter into a landlord-tenant*  
37 *relationship of any kind.*

38 (b) *Notwithstanding Section 125.9, the board may, by regulation,*  
39 *impose and issue administrative fines and citations for a violation*  
40 *of this section or Section 655, which may be assessed in addition*

1 to any other applicable fines, citations, or administrative or  
2 criminal actions.

3 SEC. 7. Section 2556.1 is added to the Business and Professions  
4 Code, to read:

5 2556.1. The board shall have the authority to inspect any  
6 premises at which the business of a registered dispensing optician  
7 is co-located with the practice of an optometrist for the purposes  
8 of determining compliance with Section 655. The inspection may  
9 include the review of any written lease agreement between the  
10 registered dispensing optician and the optometrist. Failure to  
11 comply with the inspection or any request for information by the  
12 board may subject the party to disciplinary action. The board shall  
13 provide a copy of its inspection results, if applicable, to the  
14 optician, optometrist, and the Department of Managed Health  
15 Care.

16 SEC. 8. Section 2556.2 is added to the Business and Professions  
17 Code, to read:

18 2556.2. (a) Notwithstanding any other law and except as  
19 provided in Section 655, any individual, corporation, or firm  
20 operating as a registered dispensing optician under this chapter  
21 before the effective date of this section, or an employee of such an  
22 entity, shall not be subject to any action for engaging in conduct  
23 prohibited by Section 2556 as it read prior to the effective date of  
24 the act adding this section, except that a registrant shall be subject  
25 to discipline for duplicating or changing lenses without a  
26 prescription or order from a person duly licensed to issue the  
27 same.

28 (b) Nothing in this section shall be construed to imply or suggest  
29 that a person registered under this chapter is in violation of or in  
30 compliance with the law.

31 (c) This section shall not apply to any business relationships  
32 prohibited by Section 2556 registered and operating on or after  
33 the effective date of this section.

34 (d) Nothing in this section shall prohibit an individual,  
35 corporation, or firm operating as a registered dispensing optician  
36 from engaging in a business relationship with an optometrist  
37 licensed pursuant to Chapter 7 (commencing with Section 3000)  
38 before the effective date of this section at locations registered with  
39 the Medical Board of California before the effective date of this  
40 section.

1     (e) *This section shall remain in effect only until January 1, 2019,*  
2     *and as of that date is repealed, unless a later enacted statute, that*  
3     *is enacted before January 1, 2019, deletes or extends that date.*

4     SEC. 9. *Section 2567 of the Business and Professions Code is*  
5     *amended to read:*

6     2567. (a) The provisions of Article 19 (commencing with  
7     Section 2420) and Article 20 (commencing with Section 2435) of  
8     Chapter 5 which are not inconsistent or in conflict with this chapter  
9     apply to the issuance and govern the expiration and renewal of  
10    certificates issued under this chapter. All fees collected from  
11    persons registered or seeking registration under this chapter shall  
12    be paid into the ~~Contingent Fund of the Medical Board of~~  
13    ~~California.~~ *Dispensing Opticians Fund, and shall be available,*  
14    *upon appropriation, to the State Board of Optometry for the*  
15    *purposes of this chapter.*

16    (b) The board may employ, subject to civil service regulations,  
17    whatever additional clerical assistance is necessary for the  
18    administration of this chapter.

19    SEC. 10. *Section 3010.5 of the Business and Professions Code*  
20    *is amended to read:*

21    3010.5. (a) There is in the Department of Consumer Affairs  
22    a State Board of Optometry in which the enforcement of this  
23    chapter is vested. The board consists of 11 members, five of whom  
24    shall be public members *and one of whom shall be a registered*  
25    *dispensing optician. The registered dispensing optician shall be*  
26    *registered pursuant to Chapter 5.5 (commencing with Section*  
27    *2550) and in good standing with the board.*

28    Six members of the board shall constitute a quorum.

29    (b) The board shall, with respect to conducting investigations,  
30    inquiries, and disciplinary actions and proceedings, have the  
31    authority previously vested in the board as created pursuant to  
32    former Section 3010. The board may enforce any disciplinary  
33    actions undertaken by that board.

34    (c) *This section shall remain in effect only until January 1, 2018,*  
35    *and as of that date is repealed, unless a later enacted statute, that*  
36    *is enacted before January 1, 2018, deletes or extends that date.*  
37    *Notwithstanding any other law, the repeal of this section renders*  
38    *the board subject to review by the appropriate policy committees*  
39    *of the Legislature.*

1     *SEC. 11. Section 3011 of the Business and Professions Code*  
2     *is amended to read:*

3     3011. Members of the board, except the public members *and*  
4     *the registered dispensing optician member*, shall be appointed only  
5     from persons who are registered optometrists of the State of  
6     California and actually engaged in the practice of optometry at the  
7     time of appointment or who are members of the faculty of a school  
8     of optometry. The public members shall not be a licentiate of the  
9     board or of any other board under this division or of any board  
10    referred to in Sections 1000 and 3600.

11    No person *except the registered dispensing optician member*,  
12    including the public members, shall be eligible to membership in  
13    the board who is a stockholder in or owner of or a member of the  
14    board of trustees of any school of optometry or who shall be  
15    financially interested, directly or indirectly, in any concern  
16    manufacturing or dealing in optical supplies at wholesale.

17    ~~No person, including the public members,~~ *person* shall serve as  
18    a member of the board for more than two consecutive terms.

19    A member of the faculty of a school of optometry may be  
20    appointed to the board; however, no more than two faculty  
21    members of schools of optometry may be on the board at any one  
22    time. Faculty members of the board shall not serve as public  
23    members.

24    *SEC. 12. Section 3013 of the Business and Professions Code*  
25    *is amended to read:*

26    3013. (a) Each member of the board shall hold office for a  
27    term of four years, and shall serve until the appointment and  
28    qualification of his or her successor or until one year shall have  
29    elapsed since the expiration of the term for which he or she was  
30    appointed, whichever first occurs.

31    (b) Vacancies occurring shall be filled by appointment for the  
32    unexpired term.

33    (c) The Governor shall appoint three of the public members ~~and~~  
34    ~~the six members,~~ *five* members qualified as provided in Section  
35    3011, *and the registered dispensing optician member as provided*  
36    *in Section 3010.5.* The Senate Committee on Rules and the Speaker  
37    of the Assembly shall each appoint a public member.

38    (d) No board member serving between January 1, 2000, and  
39    June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

*SEC. 13. Section 3020 is added to the Business and Professions Code, to read:*

*3020. (a) There shall be established within the State Board of Optometry a Registered Dispensing Optician Committee to oversee the registration and enforcement of registered dispensing opticians as described in Chapter 5.5 (commencing with Section 2550).*

*(b) The committee shall be responsible for all of the following:*

*(1) Oversight of and setting criteria for all applications for dispensing opticians.*

*(2) Investigating all enforcement matters relating to a dispensing optician.*

*(3) Investigating any complaint against a dispensing optician provided to the committee by the board.*

*(4) Determining and enforcing penalties, including fines, suspensions, and revocations.*

*(5) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter.*

*(c) The committee shall meet as needed.*

*SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

*SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*  
2 *immediate effect. The facts constituting the necessity are:*

3 *In order to, as soon as possible, protect various businesses,*  
4 *registered dispensing opticians, and optometrists who engage in*  
5 *a business relationship that is prohibited by Section 655 of the*  
6 *Business and Professions Code, as amended by Chapter 975 of*  
7 *the Statutes of 1979, or Section 2556 of the Business and*  
8 *Professions Code, as amended by Chapter 653 of the Statutes of*  
9 *1979, of the Business and Professions Code from discipline by the*  
10 *Medical Board of California, the State Board of Optometry, or*  
11 *any other state agency with enforcement authority while those*  
12 *entities transition to a model that will allow California businesses*  
13 *to provide health services to patients and also protect the interests*  
14 *of healing arts practitioners, it is necessary that this act take effect*  
15 *immediately.*

16 ~~SECTION 1. Section 655.1 is added to the Business and~~  
17 ~~Professions Code, to read:~~

18 ~~655.1. (a) Notwithstanding any other law, no individual,~~  
19 ~~corporation, or firm operating as a registered dispensing optician~~  
20 ~~pursuant to Chapter 5.5 (commencing with Section 2550) before~~  
21 ~~the effective date of this section, or an employee of such an entity,~~  
22 ~~or an optometrist licensed pursuant to Chapter 7 (commencing~~  
23 ~~with Section 3000) before the effective date of this section, shall~~  
24 ~~be subject to any action by the Medical Board of California, the~~  
25 ~~State Board of Optometry, another state agency, or a district~~  
26 ~~attorney, with enforcement authority for engaging in any business~~  
27 ~~relationship prohibited by Section 655.~~

28 ~~(b) Nothing in this section shall be construed to imply or suggest~~  
29 ~~that a registered dispensing optician or optometrist engaging in~~  
30 ~~any business relationship is in violation of or in compliance with~~  
31 ~~the law.~~

32 ~~(c) This section shall not apply to any business relationships~~  
33 ~~prohibited by Section 655 registered and operating on or after the~~  
34 ~~effective date of this section.~~

35 ~~(d) Nothing in this section shall prohibit an individual,~~  
36 ~~corporation, or firm operating as a registered dispensing optician~~  
37 ~~from engaging in a business relationship with an optometrist~~  
38 ~~licensed pursuant to Chapter 7 (commencing with Section 3000)~~  
39 ~~before the effective date of this section at locations registered with~~

1 the Medical Board of California before the effective date of this  
2 section.

3 (e) ~~This section shall remain in effect only until January 1, 2017,~~  
4 ~~and as of that date is repealed, unless a later enacted statute, that~~  
5 ~~is enacted before January 1, 2017, deletes or extends that date.~~

6 SEC. 2. ~~Section 2556.1 is added to the Business and Professions~~  
7 ~~Code, to read:~~

8 2556.1. ~~(a) Notwithstanding any other law, any individual,~~  
9 ~~corporation, or firm operating as a registered dispensing optician~~  
10 ~~under this chapter before the effective date of this section, or an~~  
11 ~~employee of such an entity, shall not be subject to any action for~~  
12 ~~engaging in conduct prohibited by Section 2556, except that a~~  
13 ~~registrant shall be subject to discipline for duplicating or changing~~  
14 ~~lenses without a prescription or order from a person duly licensed~~  
15 ~~to issue the same.~~

16 (b) ~~Nothing in this section shall be construed to imply or suggest~~  
17 ~~that a person registered under this chapter is in violation of or in~~  
18 ~~compliance with the law.~~

19 (c) ~~This section shall not apply to any business relationships~~  
20 ~~prohibited by Section 2556 registered and operating on or after~~  
21 ~~the effective date of this section.~~

22 (d) ~~Nothing in this section shall prohibit an individual,~~  
23 ~~corporation, or firm operating as a registered dispensing optician~~  
24 ~~from engaging in a business relationship with an optometrist~~  
25 ~~licensed pursuant to Chapter 7 (commencing with Section 3000)~~  
26 ~~before the effective date of this section at locations registered with~~  
27 ~~the Medical Board of California before the effective date of this~~  
28 ~~section.~~

29 (e) ~~This section shall remain in effect only until January 1, 2017,~~  
30 ~~and as of that date is repealed, unless a later enacted statute, that~~  
31 ~~is enacted before January 1, 2017, deletes or extends that date.~~

32 SEC. 3. ~~Section 3137 of the Business and Professions Code is~~  
33 ~~amended to read:~~

34 3137. (a) ~~Except as otherwise provided in this section, any~~  
35 ~~accusation filed against a licensee pursuant to Section 11503 of~~  
36 ~~the Government Code for the violation of any provision of this~~  
37 ~~chapter shall be filed within three years after the board discovers~~  
38 ~~the act or omission alleged as the ground for disciplinary action,~~  
39 ~~or within seven years after the act or omission alleged as the ground~~  
40 ~~for disciplinary action occurs, whichever occurs first.~~



1 ~~(b) An accusation filed against a licensee pursuant to Section~~  
2 ~~11503 of the Government Code alleging fraud or willful~~  
3 ~~misrepresentation is not subject to the limitation in subdivision~~  
4 ~~(a).~~

5 ~~(c) An accusation filed against a licensee pursuant to Section~~  
6 ~~11503 of the Government Code alleging unprofessional conduct~~  
7 ~~based on incompetence, gross negligence, or repeated negligent~~  
8 ~~acts of the licensee is not subject to the limitation in subdivision~~  
9 ~~(a) upon proof that the licensee intentionally concealed from~~  
10 ~~discovery his or her incompetence, gross negligence, or repeated~~  
11 ~~negligent acts.~~

12 ~~(d) If an alleged act or omission involves any conduct described~~  
13 ~~in Section 726 committed on a minor, the 10-year limitations period~~  
14 ~~in subdivision (c) shall be tolled until the minor reaches the age~~  
15 ~~of majority.~~

16 ~~(e) An accusation filed against a licensee pursuant to Section~~  
17 ~~11503 of the Government Code alleging conduct described in~~  
18 ~~Section 726 shall be filed within three years after the board~~  
19 ~~discovers the act or omission alleged as the ground for disciplinary~~  
20 ~~action, or within 10 years after the act or omission alleged as the~~  
21 ~~ground for disciplinary action occurs, whichever occurs first. This~~  
22 ~~subdivision shall apply to a complaint alleging conduct received~~  
23 ~~by the board on and after January 1, 2006.~~

24 ~~(f) In any allegation, accusation, or proceeding described in this~~  
25 ~~section, the limitations period in subdivision (a) shall be tolled for~~  
26 ~~the period during which material evidence necessary for~~  
27 ~~prosecuting or determining whether a disciplinary action would~~  
28 ~~be appropriate is unavailable to the board due to an ongoing~~  
29 ~~criminal investigation.~~

30 ~~(g) In any allegation, accusation, or proceeding described in~~  
31 ~~this section regarding a violation of Section 655 and subject to~~  
32 ~~Section 655.1, the limitations period in subdivision (a) shall be~~  
33 ~~tolled during the effective period of Section 655.1.~~

34 ~~SEC. 4. This act is an urgency statute necessary for the~~  
35 ~~immediate preservation of the public peace, health, or safety within~~  
36 ~~the meaning of Article IV of the Constitution and shall go into~~  
37 ~~immediate effect. The facts constituting the necessity are:~~

38 ~~In order to protect various businesses, opticians, and optometrists~~  
39 ~~who engage in a business relationship that is prohibited by Section~~  
40 ~~655 or 2556 of the Business and Professions Code from discipline~~

1 by the Medical Board of California, the State Board of Optometry,  
2 or other state agency with enforcement authority while the  
3 Legislature, with the assistance of appropriate regulatory agencies,  
4 develops a model that will allow California businesses to provide  
5 services to patients and also protect the interests of practitioners,  
6 it is necessary that this act take effect immediately.

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